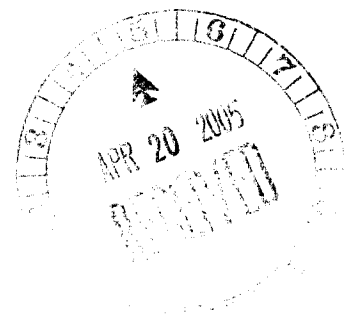


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**ORIGINAL**

Before the  
SURFACE TRANSPORTATION BOARD



Ex Parte No. 657

RAIL RATE CHALLENGES UNDER THE  
STAND-ALONE COST METHODOLOGY

ENTERED  
Office of Proceedings

APR 26 2005

Part of  
Public Record

STATEMENT ON BEHALF OF  
JOHN D. FITZGERALD, GENERAL CHAIRMAN  
UNITED TRANSPORTATION UNION (GO-386)

Gordon P. MacDougall

April 26, 2005

This statement is on behalf of John D. Fitzgerald, who has been an active participant in rulemaking proceedings concerning the general subject of rate dispute resolution by the Surface Transportation Board. Mr. Fitzgerald submitted statements and/or oral presentations, during the past several years, in Ex Parte No. 638, Procedures To Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology, and in Ex Parte No. 646, Rail Rate Challenges in Small Cases.

The instant notice of public hearing, issued on February 16, appears an outgrowth of the earlier proceedings.

1. Absence of Concrete Proposals. The Board's "Notice of Public Hearing" does not propose any changes to the existing methodology for determining "Stand-Alone" costs. Mr. Fitzgerald's

July 21, 2004 statement in Ex Parte No. 646 lamented this situation, where the agency has yet to institute a rulemaking proceeding with a concrete proposal, and request for comments, regarding any departures from the general rules when dealing with so-called small shippers or small rate disputes.

Certain procedural matters were addressed last year by the Board in Ex Parte No. 638.

This participant declines to offer comments concerning the substantive features of stand-alone cost methodology, in the absence of concrete proposals, backed up with supporting justification from its proponents.

2. Forum for Discussion. The Board's Staff (Office of Economics, Environmental Analysis, and Administration-Section of Economics), on March 15, 2005, presented a "Discussion on STB Rate Setting" at a conference captioned Rate Regulation at the Surface Transportation Board. The conference was conducted under the auspices of the Association For Transportation Law, Logistics and Policy (ATLLP) in conjunction with the DC Chapter of ATLLP and the Surface Transportation Board. Co-sponsors of the event were shown as Association of American Railroads (AAR) and The National Industrial Transportation League (NITL). The law firm of Steptoe & Johnson, LLP, hosted the event at its offices in Washington, DC.<sup>1/</sup>

A fee was charged for attendance. Unfortunately, widespread distribution of advance notice for the conference was not possible

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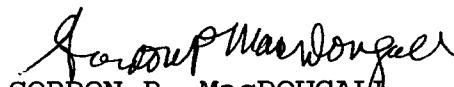
<sup>1/</sup> It is understood other sponsors included Union Pacific Railroad Company, Slover & Loftus, and Sidley Austin Brown & Wood, LLP.

or feasible to the extent that might have been desired.

Such industry conferences may be helpful to the resolution of differences. Indeed, they may be more important than the Board's public hearing today, and they cannot be ignored.

The following suggestions are offered: First, in the future, such Board Staff presentations (particularly those which bear the agency's seal), should be publicized and made available at the Board, and perhaps also on the Board's website in a timely manner, and not restricted to the website of a private organization, such as ATLLP.<sup>2/</sup> Second, this type of conference might best be held at the Board's offices, as for an earlier conference held October 6, 2004. Finally, publicity should be under the leadership of the Board, with opportunity for attendance fee-waiver in appropriate circumstances.

Railroad employees, and the public generally, have an interest in the Board's process, and in the work of its Staff.

  
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April 20, 2005

Attorney for John D. Fitzgerald

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<sup>2/</sup> The Staff's presentation, without prior announcement, on April 18, was placed on the Board's website.